DOCUMENT RESUME

ED 117 613 CG 010 218

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TITLE Ethical and Legal Responsibilities of Counselors.
PUB DATE [Nov 74]
NOTE 7p.; Paper presented at the Annual Meeting of the Nevada Personnel and Guidance Association (19th, Stateline, Nevada, November 13-15, 1974) Some lines may not reproduce clearly becuase of quality of original document

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage
DESCRIPTORS *Confidentiality; Counselor Performance; *Counselors; *Ethics; *Guidelines; *Legal Responsibility; Literature Reviews; Standards

ABSTRACT

In the aftermath of the Watergate scandal, each profession is reviewing its ethical practices. This paper assists in this renewal by citing the code of ethical standards of APGA; reviewing the laws of the State of Nevada regarding privileged communications; and covering the legal aspects which relate to counseling situations. (Author)

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Ethical and Legal Responsibilities of Counselors

by

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Introduction

In the aftermath of the Watergate scandal, each profession has begun to review its ethical practices. The American Personnel and Guidance Association has recently revised their principles in order to stimulate greater concern among the members for their own professional functioning and to provide guidelines of conduct for members of the helping professions. The purpose of this article is to assist in this renewal by citing the code of ethical standards of counselors; reviewing the laws of the state of Nevada regarding privileged communications; and, cover the legal aspects which relate to counseling situations.

Ethical Standards

The revised ethical standards as approved by the American Personnel and Guidance Association are summarized below:

1. A counselor is to continue to develop within his profession by continuous efforts to improve professional practices, teaching services and research.
2. A counselor has a responsibility both to the individual who is served and the institution within which the service is performed. Ethical behavior among professional associates, members and non-members is expected at all times.
3. The counselor must not seek self-enhancement through expressing evaluations or comparisons that are damaging to others.
4. A counselor neither claims nor implies professional qualifications exceeding those possessed and is responsible for correcting misrepresentations of those qualifications by others. Counselors are expected to accept only positions for which they have been prepared to assume.
5. In establishing fees for professional services, counselors should take into consideration the fees charged by other professions delivering comparable services as well as the ability of the counselee to pay.

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6. When counselors provide information to the public or to subordinates, peers, or supervisors, they have a clear responsibility to insure that the content is accurate, unbiased, and consists of objective factual data.
7. Counselors shall make a careful distinction between the offering of counseling services as opposed to providing public information services.
8. The counselors primary obligation is to respect the integrity and promote the welfare of the counselee.
9. The counseling relationship and information resulting therewith must be kept confidential.
10. If an individual is already in a counseling relationship with another professional person, the counselor does not begin therapy without first contacting and receiving the approval of the other professional.
11. If the counselor is unable to be of professional assistance to the counselee, the counselor avoids initiating the counseling relationship or else terminates it. In either event, the counselor is obligated to refer the counselee to an appropriate specialist.
12. When the counselee's condition indicates that there is clear and imminent danger to a counselee or others, the counselor is expected to take direct personal action or to inform responsible authorities.
13. When the counselor learns from counseling relationships of conditions that are likely to harm others, the counselor should report the condition to the responsible authority and in such a manner as to conceal the identity of the counselee.
14. Records of the counseling relationship including interview notes, test data, correspondence, tape recordings and other documents are to be considered professional information for use in counseling and are not part of public or official records of the institution or agency in which the counselor is employed.
15. The counselor reserves the right to consult with any other professionally competent person about a counselee.
16. The counselor has the responsibility to screen prospective group participants especially in the emphasis in self-understanding.
17. All experimental methods of treatment must be clearly indicated to prospective recipients and safety precautions are to be adhered to by the counselor.
18. In planning any research activity dealing with human subjects, the counselor is expected to be aware of and responsive to all pertinent ethical problems, and to insure that the research problem, design and execution are in full compliance with them.
19. It is the counselor's responsibility to provide adequate orientation or information to a test examinee prior to and following the test administration, so that the results of testing may be placed in proper perspective with other relevant factors.
20. In selecting tests for use in a given situation or with a particular counselee, the counselor must consider carefully the specific validity, reliability and appropriateness of the test or tests.
21. In making any statements to the public about tests and testing, the member is expected to give accurate information and to avoid false claims or misconceptions. Special efforts are required to avoid unwarranted connotations of such terms as I.Q. and grade equivalent scores.

22. Different tests demand different levels of competence for administration, scoring and interpretation. Counselors have the responsibility to recognize the limits of their competence and to perform only those testing functions for which they are prepared.
23. Tests should be administered under the same conditions for which they standardized.
24. The counselor must proceed with extreme caution when attempting to evaluate and interpret the performance of minority group members or other persons who are not represented in the norm group on which the instrument was standardized. (Guidepost, 1974)

Privileged Communications

On February 26, 1974, the state of Nevada assembly and senate enacted the following regulation:

> Except for communications relating to any criminal offense, the punishment for which is death or life imprisonment, communications by a pupil to a counselor in the course of counseling or psychological examination are privileged communications, and a counselor shall not, without the consent of the pupil, be examined as a witness concerning any such communication in any civil or criminal action to which such pupil is a party.

The counselor for the purpose of this regulation was defined as a person who was regularly employed by a public or private school in the State of Nevada as a counselor, psychologist, or psychological examiner for the purpose of counseling pupils and who holds a valid certificate issued by the State Department of Education.

Privileged communications are defined (Black, 1953) as, "any communications made to a counselor, solicitor, or attorney in a professional confidence and which he is not permitted to divulge, otherwise called a confidential communication." The counselor does not take a professional oath to protect the confidences that he receives in a counseling session, but he does have a moral obligation. He is not legally immune from prosecution although many states have passed legislation such as stated above to protect the right of the individual to his own privacy and the respect for privileged information. Livingston (1965) has pointed out "the personnel worker is not to divulge personal information about a client for he may be liable for any communication which he may make that would in any way

be injurious." Confidentiality is essential in establishing an effective counseling relationship and it allows for full disclosure by the counselee without fear of the information being passed on to others.

The obligation of confidentiality is relative rather than absolute because there are conditions which can alter it. For example, this obligation may lapse when the common welfare of the individual or the community in general demands revelation such as in the case of threatened suicide, expressed homicidal thoughts or actions, or commisions of a felony or similar offences. Likewise, information which is already public or can easily become public is not bound by confidentiality.

One area subject to considerable legal interpretation has been the acquisition and dissemination of information for the purpose of school records. More and more states are providing by statue that the cumulative records of students be open to parents and/or public inspection. It has been felt by the courts that parents who are inherently responsible for the education of their children who have an interest of the school records of their children, have the right to inspect these records. Simultaneously, the courts have generally ruled that communications by counselors to parents, if made in good faith and without malice about recorded information, would not subject the counselor to legal action. Such statements or comments by counselors would be considered to be qualified, privileged information and no liability would be attached where recommendations and release of information were made in good faith and without malice.

Legal Implications

The legal recognition of guaranteed confidential information is founded upon two principals of law. The first is the individual's right to privacy, and the second, his recognition that certain relationships carry with them a privilege of secrecy. This right to privacy constitutes legal recognition that an individual has prerogatives to safeguard certain facets of his personal life

from invasion by others. Court decisions in upholding this right have prohibited an incursion on the private aspects of a person's life. Therefore, the right of privacy is the right to be left alone, to be exempt from the inspection and scrutiny of others.

Counselors must exercise extreme caution in the preparation, recording and storing of counseling records and notes. If the records contain information which could be interpretated as damaging or untrue if it were made public, then the counselor could be subject to a suit of libel. Counselors should also be extremely cautious as to what they reveal about their counseling sessions because their remarks could be considered as slanderous and open to legal action.

The best defense against charges of either libel or slander is the revelation of the truth. In any legal action, the counselor would have the burden of convincing the jury that the information he released was true. Libel and slander involve either false or malicious statements. Schmidt (1962), reveals that the difference between them and the invasion of privacy is in terms of the amount of "mental anguish" suffered by a plaintiff in regards to his suit. However, the nature of the "mental anguish" is not easy to assess in terms of actuality or degree.

Counselors have also opened themselves to legal action in the utilization of personality tests, the use of human beings in research, and the collection of data. In order to protect oneself, a counselor should be sure to have prior written consent from the counselee. He should protect the data that he has collected and disseminate it only when a compelling, valid social advantage exists and the subjects have given their consent. He should allow counselees the right to examine their files and challenge the accuracy or completeness of the contents therein.

Additional state legislation is being designed to protect the client who is a minor. In such cases counseling information must be shared with parents

and school officials in some form or manner. Guidelines in respect to the nature of the confidentiality, the manner in which pertinent information will be revealed and to whom it should be revealed, should be arrived at by mutual consent by the school administration and the counselor.

Conclusion

Counselors must be knowledgeable of the ethical standards within which they are to operate. These standards can provide a valuable, introspective stimulus for the counselor in his day to day relationships. Each counselor must be aware of his personal values and his reasons for adhering to them. There is a great responsibility for the enforcement of ethical standards upon the head of each counselor. No one can fulfill these obligations perfectly, but counselors must do everything in their power to execute them to the fullest of their ability.

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